

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070107471-01**

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Instinet, LLC, Respondent
Broker-Dealer
CRD No. 7897

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Instinet, LLC ("INCA" or the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

The firm has been a member of FINRA since January 14, 1980. The firm's registration remains in effect. Instinet, LLC was formerly known as Instinet Clearing Services, Inc. The former Instinet, LLC operated under CRD No. 42886 and on June 12, 2006 merged with Instinet Clearing Services, Inc. and changed the name to Instinet, LLC operating under CRD No. 7897.

RELEVANT DISCIPLINARY HISTORY

On August 1, 2007, an AWC became final wherein the firm was censured and fined \$12,500 for SEC Rule 10b-10 and supervision violations. On November 11, 2005, an AWC became final wherein the firm was censured and fined \$15,000 for OATS violations. On October 3, 2005, an AWC became final

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wherein Instinet, LLC and INET ATS, Inc. were censured and fined jointly and severally \$1,475,000. INCA was sanctioned for violations of SEC Rule 11Ac1-5 and for OATS, ADF trade reporting, ADF order reporting, firm quotation and supervision violations. Instinet, LLC was also required to update its written supervisory procedures and retain an independent auditor to review its compliance with SEC Rule 11Ac1-5.

SUMMARY

This matter arose out of the 2007 Trading and Market Making Surveillance examination of the firm conducted by the staff of the Department of Market Regulation of NASD, wherein the staff reviewed the items set forth on Exhibit A.

FACTS AND VIOLATIVE CONDUCT

1. During the period September 4, 2007 through September 5, 2007, the firm transmitted to OATS 15 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports omitted Special Handling codes. These inaccurate and/or incomplete reports represented 30 percent of the sample of reports that the firm transmitted to OATS on the trade date(s) reviewed in the TMMS examination. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
2. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: short sale indicator reporting; books and records retention requirements [b, c and d]; use of multiple MPIDs; and SEC Rule 301(b) relating to ATS

requirements [a, b, c and d]. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

- B. The firm also consents to the imposition of the following sanctions: a censure, a fine of \$18,000 (composed of a \$10,000 fine for the OATS violations and a \$8,000 fine for the supervision violations), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph two. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph two; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

Feb. 22, 2010
Date

Respondent
Instinet, LLC

By: Jonathan Keller

Name: Jonathan Keller

Title: President

Reviewed by:

[Signature]
Counsel for Respondent

Accepted by FINRA:

3/15/10
Date

Signed on behalf of the
Director of ODA, by delegated authority

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation

Exhibit A

2007 Exam Samples
Instinet, LLC ("INCA")
20070107471

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
50	Customer and proprietary sales, reviewed for compliance with SEC Rule 200(g) long/short/exempt sale recording requirements.	From trade dates September 4 th -5 th , 2007
50	Customer and proprietary short sales, reviewed for compliance with SEC Rule 203(b) security location requirements.	From trade dates September 4 th -5 th , 2007
16	Customer and proprietary sales reported to a TRF or OTCRF, for compliance with NASD Rules 6130, 4632 and 6820 sale indicator reporting requirements.	From trade dates September 4 th -5 th , 2007
8	Customer and proprietary sales entered into the Nasdaq Exchange execution systems, for compliance with Nasdaq Rule 4755 long/short/exempt sale indicator entry requirements.	From trade dates September 4 th -5 th , 2007
22	Cancellations of trades reported to a TRF or OTCRF, for compliance with NASD Rules 4632(g), 6420(f), 6620(f) and 6130(f) trade report cancellation requirements.	From trade dates September 4 th -5 th , 2007
25	Orders for NMS stocks in which the firm acts as a market center, for compliance with SEC Rule 605 order classification requirements.	From trade dates September 4 th -5 th , 2007
4	Datasets published for on the monthly order execution report, for compliance with SEC Rule 605 requirement to publish accurate data. (A "dataset" is all required statistical data for a single order category, with each category representing a single unique combination of a security, order type and order size, as described in Rule 605.)	From September 2007
1	Quarterly order routing report, for compliance with SEC Rule 606 requirements.	N/A
50	Orders in securities required to be submitted to OATS, for compliance with NASD Rules 6954 and 6955, and Nasdaq Rules 6954 and 6955 requirement to submit OATS information.	From trade dates September 4 th -5 th , 2007
129	Order/Trade records prepared and maintained in connection with the above samples, for general compliance with requirements of NASD Rule 3110 and SEC Rules 17a-3 and 17a-4.	From trade dates September 4 th -5 th , 2007
83	Trades reported to a TRF, OTCRF or ADF/TRACS in connection with the above samples, for general compliance with requirements of NASD Trade Reporting and ADF rules.	From trade dates September 4 th -5 th , 2007
7	Customer confirmations prepared and maintained in connection with the above samples, for compliance with SEC Rule 10b-10 disclosure requirements.	From trade dates September 4 th -5 th , 2007

**2007 Exam Samples
Instinet, LLC ("INCA")
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<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
11	CRD registration records for persons conducting and/or supervising the member's trading and market making activities, for compliance with NASD Rule Series 1020, 1030 and 1040, and Nasdaq Rule Series 1020, 1030 and 1040.	List of trading personnel for September 2007 and supervisory personnel for September 2007.
All, as provided by the member.	The member's supervisory system, written supervisory procedures ("WSPs") and documents evidencing the implementation of the WSPs, for compliance with NASD Rule 3010 requirements to establish an implement a system that is reasonably designed to prevent and detect violations of applicable securities rules.	WSPs provided by the member as those in effect during September 2007, and documentation of supervisory reviews conducted for September 4 th -6 th , 2007.
All, as provided by the member.	The member's "Regular & Rigorous" review procedures (for assessing the execution quality of orders sent to other trading centers and/or internalized, for compliance with NASD Rules 2320 and 3010.	WSPs provided by the member as those in effect during September 2007, and documentation of supervisory reviews conducted for September 4 th -5 th , 2007.